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Already, the FCC and regulatory agencies in several states have determined that forms of price cap regulation are better suited to some industry conditions than traditional cost-of-service regulation.

Importantly, we emphasize our conclusion is that the Commission should have the *option to consider* other forms of rate setting, such as price cap plans, in future evidentiary proceedings. We have not made any determination that any so-called price-cap plans should be adopted now or in the future. The need for or appropriateness of applying a price cap plan to any particular public service company can be determined only after:

- (a) the General Assembly amends Article 78 to authorize the Commission to employ other forms of rate regulation, such as price caps;
- (b) a public service company files an application which specifically defines a price cap plan and requests that the Commission adopt such plan;
- (c) the application is subject to the Commission's extensive evidentiary hearings process; and,
- (d) after considering all the evidence, the Commission determines that such a plan comports with statutory requirements, will adequately protect consumers, is appropriate to the circumstances of the particular company, its services and developments in the industry, is preferable to more traditional forms of regulation and, in all significant respects, is appropriate, reasonable, and in the public interest.

The first step in the above process is the crafting of appropriate amendments to Article 78. In this regard, we do not intend to submit legislation to the General Assembly in the 1995

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session. However, we want to be prepared to comment upon legislation which may be submitted by BA-Md., other regulated companies, or other interested persons. Therefore, if BA-Md. (or other interested person) intends to submit legislation in the 1995 session of the General Assembly, we recommend the proffering of draft legislation for analysis and comment in Case No. 8587. By proffering legislative language in that proceeding, a proponent of legislation will be giving other parties and interested persons an opportunity to offer analysis and comments to the Commission and to suggest alternative or modified legislation.

At the conclusion of the proceeding, the Commission will be able to state its views about possible legislation and to indicate what advice or recommendations the Commission may provide to the General Assembly about proposals to extend to the Commission the statutory authority to adopt price cap regulation. The extent to which the Commission may favor any such legislation will be determined after proposals are proffered in Case No. 8587 and have been subject to examination and public comment.

IT IS, THEREFORE, this 25th day of April, in the year Nineteen Hundred and Ninety-four, by the Public Service Commission of Maryland,

ORDERED: (1) That the application of MFS Intelenet of Maryland, Inc., for authority to provide and resell local exchange and interexchange telephone service in Maryland is hereby granted.

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2) That the operating authority granted in Ordered Paragraph (1) is subject to the terms and conditions expressed in this Order.

3) That the request of MFS Intelenet of Maryland, Inc., for the establishment of policies and requirements for the interconnection of competing local exchange networks is granted according to the terms and conditions expressed in this Order.

(4) That MFS Intelenet of Maryland, Inc., is hereby granted waivers of certain regulations contained in the Code of Maryland Regulations, as detailed in this Order.

(5) That MFS Intelenet of Maryland, Inc., shall file within 30 days proposed tariffs in accordance with the terms of this Order.

(6) That Bell Atlantic-Maryland, Inc., shall file within 30 days proposed tariffs for revised Shared Tenant Services and local exchange interconnection, and eliminating resale restrictions in accordance with the terms of this Order.

(7) That Bell Atlantic-Maryland, Inc., shall file expanded interconnection tariffs for intrastate inter-exchange switched access within 30 days of a request by MFS Intelenet of Maryland, Inc., in accordance with the terms of this Order.

(8) That MFS Intelenet of Maryland, Inc. and Bell Atlantic-Maryland, Inc., shall jointly report to the Commission within 60 days of the date of this Order on technical

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and operational issues concerning co-carrier interconnection, as detailed in this Order.

9) That the Motion to Correct Transcript, filed by Bell Atlantic-Maryland, Inc., on April 6, 1994, is hereby granted.

(10) That the Commission hereby establishes Phase II of this proceeding for consideration of the issues identified in the text of this Order.

(11) That the Commission sets a Prehearing Conference in Phase II of this proceeding for Tuesday, May 24, 1994, beginning at 10:00 a.m. in the Commission's 16th floor hearing room, 6 St. Paul Centre, Baltimore, Maryland.

(13) That all motions not granted by action taken herein are denied.

Frank O. Heintz
Lilo K. Schiffrin
Claude M. Ly
E. Lynn K. Hinchman
Suzanne Boyer
Commissioners

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Appendix B

ORDER NO. 72348

IN THE MATTER OF THE APPLICATION *
OF MFS INTELENET OF MARYLAND, *
INC. FOR AUTHORITY TO PROVIDE *
AND RESELL LOCAL EXCHANGE AND *
INTEREXCHANGE TELEPHONE SERVICE; *
AND REQUESTING THE ESTABLISHMENT *
OF POLICIES AND REQUIREMENTS FOR *
THE INTERCONNECTION OF COMPETING *
LOCAL EXCHANGE NETWORKS. *

IN THE MATTER OF THE INVESTIGA- *
TION BY THE COMMISSION ON ITS *
OWN MOTION INTO POLICIES REGARD- *
ING COMPETITIVE LOCAL EXCHANGE *
TELEPHONE SERVICE. *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

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PCC MAIL ROOM

CASE NO. 8584
PHASE II

Susanne Brogan, Commissioner
Claude M. Ligon, Commissioner
E. Mason Hendrickson, Commissioner
Gerald L. Thorpe, Commissioner

ISSUED: December 8, 1995

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APPEARANCES

Andrew D. Lipman and Russell M. Blau, for MFS Intelenet of Maryland, Inc.

David K. Hall, William Sarver, Michael D. Lowe, Lydia R. Pulley and Randal S. Milch, for Bell Atlantic-Maryland, Inc.

Allen M. Freifeld, Janice M. Flynn and James R. Scheltema, for the Staff of the Maryland Public Service Commission.

Michael J. Travieso, Theresa V. Czarski and Frederick H. Hoover, for Maryland People's Counsel.

Robert C. Lepardo, Carl Giesy, Jeffrey Blumenfeld and Christy C. Kunin, for MCI Telecommunications Corporation.

Matthew W. Nayden, Karlyn P. Stanley and Wilma R. McCarey, for AT&T Communications of Maryland, Inc.

Cathy Thurston and Thomas F. Mapp, for Sprint Communications Company, L.P.

J. Manning Lee, Teresa Marrero, Jodie Donovan-May, Edward F. Shea, Jr. and Jeral A. Milton, for Teleport Communications Group, Inc.

John F. Conwell and J. Edward Davis, for Cable Television Association of Maryland, Delaware and Washington, D.C.

Peter Q. Nyce, Jr., Cecil O. Simpson, Jr., Sheryl A. Butler and Robert A. Ganton, for United States Department of Defense and other Federal Executive Agencies.

Peter A. Rohrbach, Linda L. Oliver, Julie T. Barton, Kyle D. Dixon and Andrew C. Topping, for WorldCom, Inc. d/b/a/ LDDS WorldCom.

James P. Bennett and Robert S. Fleishman, for Baltimore Gas and Electric Company.

Ronald A. Decker, Michael A. Meyer, Kevin B. Collins and Thomas P. Perkins, III, for SBC Media Ventures, Inc.

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Marvin Polikoff, for Communication Workers of America.

Scott J. Rafferty, for Middle Atlantic Payphone Association.

Mark R. Perkell, for Frontier Communications International Inc.

I. INTRODUCTION

On July 26, 1993, MFS Intelenet of Maryland, Inc. ("MFSI-MD" or "Applicant") filed an application with the Commission to provide local exchange service to business customers in the State of Maryland, in competition with Bell Atlantic-Maryland, Inc. ("BA-MD" or "Bell Atlantic"). In its application, MFSI-MD sought authority to provide local exchange service using two approaches. The first was as a reseller of local exchange services that it would buy from Bell Atlantic. The second was through telecommunications facilities constructed by MFSI-MD or companies affiliated with it (also known as "facilities-based" service, or "co-carriage").

After extensive hearings on the application, on April 25, 1994 we issued Order No. 71155 (see 85 Md. PSC 38). In Order No. 71155, we determined that it was in the public interest to authorize MFSI-MD to provide local exchange service to business customers as a co-carrier and as a reseller of BA-MD's local exchange service. *Id.* at 49. We found that competition would be superior to regulation in ensuring that customers received desired services at reasonable rates. We also observed that local exchange competition is occurring in the State already, in the form of cellular and other radio-based technologies over which we have no jurisdiction. Restricting MFSI-MD's and other wire-based entrants' operations, we found, would favor radio-based technologies, an unnecessary market

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distortion. Additionally, MFSI-MD received authority to provide intrastate long distance services. *Id.* at 44.

While Order No. 71155 resolved many issues relating to MFSI-MD's application to provide business local exchange service in Maryland, the evidentiary record provided insufficient information to resolve other issues. Accordingly, we stated that some of our decisions were interim in nature. We identified issues that were not resolved in Phase I, and stated that they would be addressed in a second phase. *Id.* at 67.

Additionally, we deferred until Phase II certain issues discussed but not resolved in another Commission proceeding, Case No. 8587. That case was instituted in response to a July 20, 1993 Petition filed by the Office of People's Counsel ("OPC" or "People's Counsel") requesting an investigation into the appropriate means of regulating firms, including cable television firms, that may offer local exchange and exchange access services in Maryland.

By Order No. 71180, issued on May 5, 1994 (85 Md. PSC 69), we held that we have jurisdiction over two-way telecommunications services offered by cable television companies. Further, by Order No. 71485, issued in Case No. 8587 on October 5, 1994 (85 Md. PSC 187), we affirmed our commitment to a competitive local exchange market, revisited some issues addressed in Case No. 8584, Phase I, and stated various policies intended to guide the transition to a competitive local exchange market.

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Pursuant to our direction in our Phase I Order (85 Md. PSC at 55-56), MFSI-MD and BA-MD initiated a series of discussions designed to resolve some of the technical issues that were not decided in Phase I. The two parties presented us with two non-proprietary reports, filed on June 29, 1994 and September 1, 1994, addressing these technical issues. They were able to reach agreement on the assignment of central office codes, switch certification principles, traffic exchange arrangements, service standards, signalling requirements for 911 trunks, MFSI-MD's participation in the State's telecommunications relay service program, call intercept procedures for customers migrating from one carrier to the other, tandem subtending arrangements for interexchange carriers ("IXCs") with which MFSI-MD has no direct interconnection, and 911 data base issues. The two parties reached agreements in principle on several additional items, but were not able to agree on others.

It is with this extensive background that we and the parties began to finalize a list of issues to be addressed in the Phase II proceedings and to establish a procedural schedule. After submissions by the parties suggesting various issues, on April 11, 1995 the Commission's Executive Secretary issued a letter detailing the issues to be covered in the Phase II proceedings. After several adjustments, a procedural schedule was determined setting forth several filing dates for written testimony from the various parties to the proceeding. The last round of prefiled testimony occurred on July 21, 1995.

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Hearings in this proceeding were held from August 7, 1995 through August 15, 1995. Testifying for MFSI-MD were Gary J. Ball, a Director of Regulatory Affairs for the Mid-Atlantic and Southeastern Regions, and William Page Montgomery, principal of Montgomery Consulting.

Testifying on behalf of BA-MD were John R. Gilbert, Manager - Regulatory for BA-MD; Elizabeth R. Beard, a Director in the Cost Development and Regulatory Support organization of Bell Atlantic Network Services, Inc.; Daniel J. Whelan, President and Chief Executive Officer of BA-MD; Lee Self, Director of Marketing and Database Services for Bell Atlantic Directory Services; William E. Taylor, Senior Vice President of National Economic Research Associates Inc.; Norman Walker, Manager of Customer Network Engineering for BA-MD; Richard G. Petzold, retired Comptroller and Principal Financial Officer of BA-MD; and Charles H. Eppert, III, Director - Technical Regulatory and Access Services Planning in the Technology Planning Department of the Bell Atlantic Network Services Staff.

Nina W. Cornell, a consulting economist, and Robert A. Mercer, President of Hatfield Associates, testified for MCI Telecommunications Corporation ("MCI"). Testifying on behalf of Teleport Communications Group, Inc. ("TCG") were Paul Kouroupas, TCG's Eastern Regional Director of Regulatory Affairs, and Gerald W. Brock, a consultant.

Testifying for the United States Department of Defense and other Federal Executive Agencies ("DOD/FEA") were Harry Gildea, a consultant, and Mark Langsam, Chief of the Economics

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Branch of the Local Telecommunications Procurement Division of the Information Resources and Management Service of the federal government's General Services Administration.

A. Daniel Kelley, Senior Vice President at Hatfield Associates, Inc., testified on behalf of Cable Television Companies ("Cable TV"). Mark A. Jamison, Manager, Regulatory Policy and Coordination, presented testimony for Sprint Communications Company L.P. ("Sprint").

Testifying on behalf of AT&T Communications of Maryland, Inc. ("AT&T") were Don J. Wood, a telecommunications consultant; John W. Mayo, a professor of economics; Roger L. Riggert, a consultant; Thomas J. Cosgrove, a District Manager in AT&T's Communications Services Group Controller Department; and Ross L. Baker, State Manager for regulatory and legislative matters. Testifying for WorldCom, Inc. d/b/a LDDS WorldCom ("LDDS") was Joseph Gillan, a consultant.

Testifying on behalf of the Staff of the Public Service Commission of Maryland ("Staff") were Michael Starkey, Director of the Commission's Telecommunications Division; Geoffrey J. Waldau, Staff regulatory economist; Ann Amalia Dean, Staff regulatory economist; Steve Molnar, the Commission's Assistant Director of Telecommunications; and Anthony Myers, Staff telecommunications engineer.

The hearings in this proceeding resulted in 1872 pages of transcript.

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At the close of the hearings, the parties were asked to address on brief the issues contained in the April 11, 1995 issues list, and to specify the tariff provisions that BA-MD, MFSI-MD, TCG and MC¹ should include in their local exchange and local interconnection tariffs. The parties filed initial briefs in this proceeding on September 19, 1995, and reply briefs on October 10, 1995. The Commission has considered all of the testimony, exhibits, arguments and briefs in reaching its decisions in this proceeding, and extends its appreciation to the parties for their considerable efforts in developing the record.

II. DISCUSSION OF ISSUES AND CONCLUSIONS

A. Introduction

As noted above, in Phase I we determined that it was in the public interest to authorize MFSI-MD to provide local exchange services in competition with BA-MD. We noted that all parties supported:

. . . the proposition that fair competition will encourage efficiency of operations and will stimulate product and service offerings desired by consumers. Competition also leads to lower prices with resultant benefit to the economy and consumers. 85 Md. PSC at 49.

¹ Subsequent to the issuance of Order No. 71155, subsidiaries of MCI and TCG filed applications, similar to MFSI-MD's, for the provision of business local exchange service in Maryland. At the Administrative Meetings of October 26, 1994 and December 7, 1994, we approved the applications of MCI's and TCG's subsidiaries, respectively. These decisions were confirmed for MCI in Order No. 71591, issued in Case No. 8680 on November 18, 1994, and for TCG in Order No. 71633, issued in Case No. 8682 on December 12, 1994. Their tariffs, where applicable, are to be conformed to the principles, policies, and rates set forth in this Order.

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We went on to observe that the decision to open local exchange service to competition was consistent with our decisions over the previous ten years allowing competition in the interexchange toll and coin telephone markets. *Id.*

In Phase I, we recognized that the days when there was only a single monopoly provider of any particular telecommunications service are drawing to an end. We noted in Order No. 71155 that not only is it feasible for wire-based companies to compete with BA-MD's local exchange service, wireless services, such as cellular and personal communications companies, either already compete or will soon do so.² 85 Md. PSC at 49. We noted that we lack the legal authority to restrict wireless competitive choices. Therefore, foreclosing wire-based companies from the local exchange market would not completely protect BA-MD's operations from competition. Instead, the chief result would be to favor one competing technology over another, which would constitute an unnecessary distortion of the market. *Id.*

Accordingly, we made the decision in Phase I to open the local exchange market to wire-based competition. We affirm that decision here. In a market that can be served by competing firms, we will not artificially constrain the number of providers, nor favor any one technology or company over others.

² Indeed, on November 15, 1995, the country's first personal communication service firm, a digital wireless service partly owned by Sprint, began operating in BA-MD's service territory.

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Of course, these decisions merely recognize and implement a central guiding principle: when consumers have real choice in the selection of a provider of a service, the market forces unleashed by the exercise of that choice are superior to regulation in ensuring the adequate supply of the service at a reasonable price and in providing incentives to providers to be more efficient and to develop new services and technologies.

In a market being opened to competition, we are of the opinion that it would be unfair to consumers to maintain, with no change, the regulatory restraints on the heretofore monopoly provider, BA-MD. To do so would deprive BA-MD of some of the flexibility and tools it will need to retain and obtain customers.

In this regard, it is important to note that we have been engaged, for some time now, in changing the regulatory strictures applicable to BA-MD. For instance, in the Phase I Order we discussed at length the fact that we have already approved regulatory reforms applicable to BA-MD. *Id.* at 47-48 and 64-66. Pursuant to those reforms, we allowed the division of BA-MD's service offerings into two categories: competitive; and other-than-competitive.³ BA-MD is permitted to request waiver of 30-day notice requirements and to market-price competitive

³ See *Re Chesapeake and Potomac Telephone Company of Maryland*, 79 Md. PSC 169 (1988). The Commission permitted the continuation of the reforms, with some revisions, in *Re Chesapeake and Potomac Telephone Company of Maryland*, 81 Md. PSC 395 (1990), and *Re Chesapeake and Potomac Telephone Company of Maryland*, 84 Md. PSC 4 (1993). Parenthetically, we note that BA-MD's former corporate name was The Chesapeake and Potomac Telephone Company of Maryland.

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services on 14 days notice.⁴ It also is permitted to keep all earnings from competitive services and a portion of any earnings it can achieve on other-than-competitive services in excess of its authorized rate of return. A benefit to customers has been that rates for other-than-competitive services have not increased since 1985. Indeed, dial tone line and usage charges have decreased slightly since that time.

Another important regulatory development has been the implementation of amendments to Section 69 of The Public Service Commission Law⁵ ("The PSC Law"). During its 1995 legislative session, the General Assembly enacted a new subsection "e." within Section 69.⁶ The new subsection grants us the authority to use alternative forms of rate regulation for telephone companies. In Phase I, we committed to the parties to review any alternative regulation legislative proposals they might have (see 85 Md. PSC at 66). We stated our support for this legislation in Order No. 71485 (see 85 Md. PSC at 204-207).

Additionally, subsequent to and in recognition of our decision in Phase I to allow local exchange competition for business customers, we approved a trial customer specific pricing arrangement tariff filing by BA-MD allowing it to price exchange access and usage on a market basis for its larger business

⁴ We also retained our authority to subject new competitive service tariff filings to the suspension and investigation provisions of The PSC Law. See 79 Md. PSC 169, 200 (1988).

⁵ Md. Ann. Code Art. 73 (1995 Cum. Supp.).

⁶ Chapters 140, 141 of the 1995 Acts of the Maryland General Assembly.

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customers.⁷ In sum, as we have moved to allow competition in the local exchange market so as to benefit consumers, we have been quite careful to ensure that the existing provider, BA-MD, receives the tools it requires to compete in that market.

It is important to note that we, in opening local exchange markets to competition, have been carefully focused on gauging the impact(s) that this decision may have on telephone customers in Maryland. Potential impacts include increased and better services and lower prices. We are mindful, however, of the potential for other impacts that would not be viewed favorably by at least some customers. As local exchange competition develops it is likely to occur first in more densely populated portions of the State. Customers located there, particularly business customers, are among Bell Atlantic's most profitable customers. Competitive threats to customers eligible for the customer specific pricing plan may result in BA-MD cutting prices to them.⁸ As will be discussed at length later in this Order, Bell Atlantic contends competition may put upward price pressure on telephone rates for customers with fewer competitive choices.

In Phase , we authorized MFSI-MD to provide local exchange service in two modes, resale and co-carriage. Resale of local exchange service by MFSI-MD involves purchasing local

⁷ BA-MD filed its trial tariff on January 27, 1995, in Transmittal No. 909. We accepted the tariff for filing, with some modification, at our March 15, 1995 Administrative Meeting.

⁸ As mentioned above, BA-MD requested and received permission to cut prices for some of its large business customers earlier this year.

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exchange services from BA-MD. Then, pursuant to its own tariffs, MFSI-MD would resell BA-MD's local exchange services to MFSI-MD's customers.

Co-carrier operations, on the other hand, are facilities-based. Therefore, MFSI-MD needs to have certain telecommunications equipment of its own in order to operate as a co-carrier. It may be possible for MFSI-MD to rent or buy some of those facilities from an existing facilities-based carrier, such as BA-MD. Additionally, MFSI-MD, and its affiliate companies,⁹ already have in place some telecommunications equipment that MFSI-MD can use to provide local exchange service.

Co-carriage issues dominated the Phase II proceedings. As was the case in Phase I, the parties devoted much attention to the appropriate rates, terms and conditions governing the interconnection of the BA-MD and MFSI-MD networks.

BA-MD is the local exchange service provider to every local exchange customer in the State, with the exception of the small number of customers in Cecil County served by the Armstrong Telephone Company. As such, it has what has been termed a "ubiquitous" network in Maryland. Accordingly, the advent of co-carrier operations by MFSI-MD and others will result in other local exchange networks overlapping portions of BA-MD's network.

⁹ One of MFSI-MD's sister companies owns and operates a digital switch in Reston, Virginia. At present, the switch is connected to fiber-optic loops in the Washington, D.C. and Baltimore Metropolitan areas. Other affiliates of MFSI-MD currently utilize this equipment to provide competitive switched and special access services to business customers in the two metropolitan areas. Through working arrangements with its affiliates, MFSI-MD intends to utilize these loops, trunks and the switch to provide, with appropriate interconnection with BA-MD, local exchange service in the State of Maryland.

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These facts require the existence of protocols governing network interconnection. Absent these protocols, a customer of one local exchange company would not be able to place a local call to a customer of another local exchange company. Workable protocols, on the other hand, will allow a BA-MD customer to place a call to a MFSI-MD customer, and have it routed over BA-MD facilities to an interconnection point where it will be handed off to the MFSI-MD network for the completion of the call. Accordingly, two-way seamless and transparent interconnection is essential for the operation and integration of a network of telecommunications networks.

This description of network interconnection also highlights an important semantic point. When the term "interconnection rate" is used in this Order, it is usually in the context of describing the rate charged by a carrier for performing the work necessary to terminate a call that was initiated by a customer of another local exchange carrier. Thus, the reader will sometimes encounter "termination rate" in this Order as a synonym for "interconnection rate."

As previously mentioned, BA-MD and MFSI-MD have resolved many of the technical protocols of interconnection, including switch certification, traffic exchange arrangements, and service standards. Interconnection issues contested in this proceeding include, among others, the rates each carrier should charge for termination of calls on its network and the determination of the appropriate points of interconnection.

B. Interconnection Rates

In Case No. 8584, Phase I, we granted MFSI-MD's request for tandem and central office interconnection with BA-MD's network. 85 Md. PSC at 55. Additionally, we rejected all of the parties' proposed interconnection rates. Instead, temporary rates were set for BA-MD's completion of calls initiated by customers of MFSI-MD. *Id.* at 56-61. We declined to set rates for MFSI-MD's completion of calls initiated on BA-MD's network, preferring instead to wait for MFSI-MD to provide cost support for its proposed rates. *Id.* at 56.¹⁰

In Order No. 71155, our discussion of interconnection rate issues coalesced around two basic themes: insulating rates for basic services provided by BA-MD from undue upward price pressure; and concern that BA-MD's proposed interconnection rates would not allow competition to develop. In the instant proceeding, it is not surprising that BA-MD quotes language from Order No. 71155 that stresses the first of these themes, while the other parties quote language emphasizing the latter.

It is also important to note that we revisited interconnection rate issues in Order No. 71485, issued in Case No. 8587 six months after the issuance of Order No. 71155. There, we further developed the proper pricing of interconnection and provided guidance for the parties to follow in Case No. 8584, Phase II. See 85 Md. PSC at 214-220.

¹⁰ However, at the Administrative Meetings of April 19, 1995 and November 8, 1995, we approved interim interconnection rates for MFSI-MD and MCI, respectfully, that mirrored the BA-MD interim interconnection rate.

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In Phase II, BA-MD proposes an interconnection rate structure consisting of three components: a per-minute rate that mirrors intrastate, interexchange access charges less the carrier common line charge; a monthly per line rate designed to capture the difference between the revenues received from the per-minute rate and BA-MD's "cost of ubiquity;" and a universal service component with an amount that would be determined in a universal service proceeding.

The first element of the tripartite rate structure provides a per-minute charge of 2.2108 cents. BA-MD witness Gilbert estimates that Bell Atlantic will receive, on average, \$11.83 per line per month from the per minute charges.¹¹ Monthly per line charges, the second element of the three-part structure, would differ by county. Specifically, Mr. Gilbert proposes placing each county into one of three Local Interconnection Groups ("LIGs"). He determines membership in a LIG by clustering counties sharing similar profitability (to BA-MD) profiles. Each LIG would have a different monthly per line rate, with an average of about \$19.00 per line per month.

The rates proposed by Mr. Gilbert are based on a cost study performed by BA-MD witness Beard. In the cost study, BA-MD devotes much attention to the cost of ubiquity. Ms. Beard provides a "bottoms-up" incremental cost analysis concluding that

¹¹ The actual amount received would be higher, but Mr. Gilbert subtracts interconnection charges of 0.5 cents per minute of use that he expects BA-MD will have to pay to co-carriers.

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the cost of ubiquity is, basically, the shared¹² and common costs of the ubiquitous network plus geographic subsidies, investment in outmoded plant, and certain other costs. Another analysis provided by Ms. Beard determines the cost of ubiquity to be the total embedded costs of the existing network less the direct incremental costs of all services, plus the subsidies BA-MD determined are necessary to provide basic service in certain areas of the State. The former, "more conservative," bottoms-up incremental analysis determined that the total annual cost of ubiquity is \$485.4 million.

It was this amount (less the subsidy for Yellow Pages) that Mr. Gilbert apportions among the Maryland counties and Baltimore City. After grouping the jurisdictions into LIGs, and separating business lines from residential lines, he divides the sums for each LIG by the number of access lines in the LIG, in order to determine each business line's "fair share" of the cost of ubiquity.¹³

Bell Atlantic does believe that MFSI-MD and other co-carriers should be allowed to charge interconnection rates to BA-MD and other co-carriers. It supports rates based on the co-carriers' costs. It opposes co-carriers' interconnection rates

¹² In this Order, we use the terms "shared costs" and "joint costs" interchangeably. "Shared" or "joint" costs are costs that can be attributed on a cost causative basis to a firm's provision of two or more products or services, but cannot be attributed to any one of the products or services by itself.

¹³ It should be noted that on cross-examination with counsel for SBC Media Ventures, Mr. Gilbert acknowledged some errors in BA-MD's calculations.

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being set at the level of BA-MD's rates, because only BA-MD has a ubiquitous network and provider of last resort responsibilities.

The other parties propose interconnection rates and structures different from BA-MD's proposals. Most of these parties support reciprocal, symmetrical cost-based rates for all co-carriers. That is, all local exchange carriers should be allowed to charge each other the same cost-based rate for interconnection. These parties justify their proposals on economic efficiency and fair competition grounds. Non-cost-based interconnection rates, they say, hurt consumers by building into rates an artificially high cost of interconnection that competition cannot dislodge. Additionally, they contend that above-cost interconnection rates that are asymmetrical in BA-MD's favor will be a barrier to entry by preventing new entrants from being able to offer consumers a price competitive with Bell Atlantic's. Thus, these parties argue, the Commission's pricing of interconnection will determine, to a large degree, whether and the extent to which local exchange competition will exist in Maryland.

The non-Bell Atlantic proposals tend to follow one of two formats: a minute-of-use ("MOU") rate based on BA-MD's Total Service Long Run Incremental Cost ("TSLRIC") of interconnection, plus a mark-up for joint and common costs; or mutual traffic exchange (also referred to as "bill-and-keep" and "payment in kind"). It is noted, however, that TCG proposes that all carriers make DS1 ports available to interconnecting carriers for a flat monthly fee per port. The port charges would be based on

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busy hour traffic flows. Staff thinks it appropriate to allow carriers to choose between a MOU-based option and a flat rate per port option.

Maryland is considered one of the leading states in the development of telecommunications policy. The State's role has arisen from a combination of far-sighted industry members, a diverse and educated consuming public, and a flexible regulatory structure.

Pursuant to authority granted by the General Assembly, we set a significant portion of telecommunications policy in the State. Technological, legal, and regulatory changes in the telecommunications industry in the last 15 years have required us to approach our job as anything but business as usual. Rather, flexibility, patience, and a willingness to consider new approaches have been the attributes demanded by events, and the hallmarks, we believe, of our telecommunications policies over that period of time.

The issues presented and the record developed in this proceeding also demand these qualities. Considerable judgment is required to balance the sometimes competing interests of local service providers and consumers. In setting interconnection rates and resolving the other issues in this proceeding, we believe we have appropriately balanced the interests of consumers and providers alike. However, we retain the flexibility and authority to modify any and all of these decisions should events so require.